



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/148510

PRELIMINARY RECITALS

Pursuant to a petition filed April 04, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on July 16, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether the Petitioner's appeal is timely and, if so, whether the agency properly placed the Petitioner's daughter in a restrictive re-enrollment status from January 1, 2013 – June 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 25, 2013, the Petitioner applied for BadgerCare benefits for her daughter. The application reported Petitioner's address as [REDACTED].

3. On January 28, 2013, the agency processed the application and the Petitioner's daughter was found to be eligible for BC+ benefits with a monthly premium of \$55.
4. On January 28, 2013, the agency mailed a premium information/payment notice to the Petitioner with a coupon informing her of the need to pay a \$55 premium by February 10, 2013. The coupon was mailed to the Petitioner at the address the Petitioner had reported in her application.
5. On January 29, 2013, the agency issued a Notice of Action needed to the Petitioner at [REDACTED] indicating she must pay the BC+ premium by February 25, 2013. The notice also indicated that more information was sent about the amount of the premium and how to pay it.
6. On January 30, 2013, the Petitioner contacted the agency to determine the status of her application. At that time, she was informed that her daughter was eligible and she would receive a notice and coupon for the monthly premium for February in the mail.
7. On February 26, 2013, the agency issued a Notice of Decision to the Petitioner at [REDACTED] informing her that her daughter was not enrolled in BC+ effective January 1, 2013 due to non-payment of the monthly premium.
8. On May 30, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning Medicaid, including BC+, must be filed within 45 days of the date of the action. Wis. Stats. § 49.45(5). 7 C.F.R., sec. 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 93 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The Petitioner contends that she did not receive any of the notices mailed by the agency until sometime in April. She testified that she was not receiving mail because the post office refused to deliver mail to her home because the walk was not shoveled. She was aware that she was not getting her mail. She stated her landlord did not take care of getting the walk shoveled. This explanation is not satisfactory. It stretches credibility to suggest that the walk was impassable from January through April. If it was, there was not a satisfactory explanation as to why the Petitioner herself could not take care of it, especially as she was aware that she was not getting her mail and that she was expecting mail from the agency. There was also no explanation from the Petitioner why she did not inform the agency of the problems in getting mail. Even if she had legitimate mail problems, she was aware from the phone call on January 30, 2013 that she owed a premium for February, 2013. The Petitioner failed to take appropriate responsibility to ensure she was able to receive mail from the agency and failed to take appropriate responsibility to pay the premium she owed. Even if the appeal was timely, I would conclude that the agency properly placed the Petitioner's daughter in restrictive reenrollment for non-payment of the premium.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of July, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 19, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability